

IN THE SENATE OF THE UNITED STATES.

MAY 15, 1896.—Ordered to be printed.

Mr. PASCO, from the Committee on Claims, submitted the following

REPORT:

[To accompany S. 1488.]

The Committee on Claims, to whom was referred the bill (S. 1488) appropriating \$6,332.30 in payment of the claim of C. M. Kirkpatrick for paving the street adjacent to the United States Arsenal at Indianapolis, Ind., have carefully examined the same and submit the following report thereon:

It appears from the papers submitted to the committee that in June, 1895, the city of Indianapolis, Ind., entered into a contract with Christian M. Kirkpatrick to pave Clifford avenue in that city adjacent to the grounds of the United States Arsenal, one-half of which avenue is a part of said grounds, and has been left outside of the arsenal fence for the convenience of the Government as well as the public. By the terms of the contract Kirkpatrick was to look to the United States for its fair proportion of the expense of the work. It has been completed in a satisfactory manner and accepted by the city; the assessments made upon the private property holders for the cost of the improvement properly chargeable to them according to the city ordinances have been paid, and the contractor desires to receive from the Government compensation for so much of the work as was actually done upon its portion of the avenue.

The subcommittee appointed to investigate the claim asked the Secretary of War for such information upon the case as the Department could furnish, with an opinion as to its merits. The House bill (H. R. 3576) having the same purpose in view was, however, accidentally submitted to the Secretary instead of the Senate bill, but both are in exactly the same language, and what is said in the accompanying correspondence as to the House bill applies also to the Senate bill now under consideration.

The Assistant Secretary, who took the matter in charge, caused it to be referred to Maj. A. L. Varney, commanding the Indianapolis Arsenal. In reply he gave a full statement of the case, which is here inserted as a part of this report:

INDIANAPOLIS ARSENAL,  
Indianapolis, Ind., April 27, 1896.

SIR: I have the honor to acknowledge the receipt of your letter of the 17th instant, inclosing the bill (H. R. 3576) providing for "payment of claim of C. M. Kirkpatrick for paving the street adjacent to Indianapolis Arsenal," and calling for full report, etc.

In reply, I have the honor to invite attention to the inclosed copy of extract from deed of Calvin Fletcher and wife, conveying to the United States Government the greater portion of the land now designated as Indianapolis Arsenal.

The 6.70 acres referred to in the Fletcher deed were purchased about the same time by the United States from A. R. Benton, and now form a portion of this arsenal.

These two pieces of land together constitute the entire "east half of the north-west quarter of section No. 6," etc., as described in the inclosed extract of the Fletcher deed. The State of Indiana has ceded to the United States Government full and complete jurisdiction over all the territory inclosed between the boundary lines of the one-eighth section described above, and as located by the original survey.

The section line forming the northern boundary of this tract of land (Indianapolis Arsenal) lies along the center of Clifford avenue. The boundary fence on this front of the arsenal has been withdrawn to the southward, leaving a strip of Government land 30 feet wide uninclosed. This strip of land, together with a like strip adjoining on the opposite side of the section line, and furnished by the city of Indianapolis, form the street, 60 feet wide, known as Clifford avenue.

It is held that title to land belonging to the United States can not lapse, and can not be conveyed away except by act of Congress, whatever action the custodians of such property may take, or neglect to take.

The United States Government therefore claims not only right of way over its property in Clifford avenue, but full and complete control of it, the same as if the public had not been permitted to use it as a highway.

In accordance with this view, it has been held that the United States Government should provide a suitable sidewalk along its front, and should pave its portion of the street, and keep both in good repair for its own as well as the public use. Annual estimates of cost of these improvements, with urgent but ineffectual request for appropriations, have been made by me each year during the term of my command of this arsenal.

The city has now taken the matter in hand and by contract with C. M. Kirkpatrick has paved this avenue with bricks (the Government portion as well as that of the city), but has not laid a new sidewalk.

No effort was made to prevent the city from making these improvements, as it was thought there could be no objection to the paving of this street by the city for its own use if it chose to incur the expense. No encouragement has been given to anyone that reimbursement could be expected. My action has been confined to my estimates, and official recommendations to the War Department.

I inclose herewith a certified copy of the city's contract with C. M. Kirkpatrick.

In my judgment this paving and the new curbstones were both desirable and necessary, and the contract price, viz, \$4.68 per linear foot on each side, is fair and reasonable. The total amount specified in the inclosed bill (H. R. 3576), viz, \$6,332.30, seems to be somewhat in excess of the amount called for by the terms of the contract. The exact length of the northern boundary line of this arsenal, measured on Clifford avenue from its intersection with the center line of Hanna street on the west to the eastern boundary line of the arsenal, is 1,291.5 feet.

According to this measurement the cost of the paving on the arsenal side was \$6,044.22.

Your letter of the 17th instant, with inclosure, is returned herewith as requested.

Very respectfully, your obedient servant,

A. L. VARNEY,  
*Major of Ordnance, Commanding.*

The CHIEF OF ORDNANCE, UNITED STATES ARMY,  
*Washington, D. C.*

This report was indorsed as follows by Brigadier-General Flagler, Chief of Ordnance:

[First indorsement.]

OFFICE OF CHIEF OF ORDNANCE,  
*Washington, April 29, 1896.*

Respectfully returned to the Honorable Secretary of War.

The boundary line of the arsenal is the center line of Clifford avenue, so that one-half of the avenue belongs to the United States. It is deemed just that the United States should pave and take care of its half of this street. Estimates for paving the street have been submitted in my annual estimates for several years past, but no appropriation for the work has been made by Congress.

The city of Indianapolis made a contract with C. M. Kirkpatrick to pave the whole street, but agreed to pay Kirkpatrick for only the city's half of the paving, leaving Kirkpatrick to collect from the United States for paving the other half. The bill returned herewith is to provide for making this payment.

I inclose herewith a report from the commanding officer of the arsenal on this subject, who incloses a copy of the contract with Kirkpatrick, and states that the work has been properly done and that the price charged is a fair one.

This is not the best method of having such work done and of paying for the same (it might establish an undesirable precedent), as it is much better that the United States should do its own work. I recommend, however, that the bill be passed, and that the contractor be paid for his work.

Attention is invited to the report of the commanding officer of the Indianapolis Arsenal, which shows that a mistake has been made in the computations, and the amount required to pay the contractor for his work is \$6,044.22, instead of \$6,332.30, as stated in the bill.

D. W. FLAGLER,  
*Brigadier-General, Chief of Ordnance.*

It was afterwards indorsed as follows by the Assistant Secretary, Joseph B. Doe:

[Second indorsement.]

WAR DEPARTMENT, May 4, 1896.

Respectfully returned to Hon. S. Pasco, Committee on Claims, United States Senate, inviting attention to the preceding indorsement hereon and inclosures therein referred to.

JOSEPH B. DOE,  
*Assistant Secretary of War.*

The committee think that sufficient reasons appear in this correspondence why Mr. Kirkpatrick should receive a proper compensation for the work done on the portion of the avenue belonging to the United States, but are in favor of accepting Major Varney's measurement of the ground actually paved as a proper basis of settlement. The cost of the work, at the contract price of \$4.68 per linear foot, amounts, on this basis, according to Major Varney's calculation, to \$6,044.22, and his estimate seems to be correct.

It appears that under his contract with the city Mr. Kirkpatrick is under obligation to keep the avenue in proper repair for five years from the date of the completion of the work without additional cost, and whenever the United States settles this claim the Secretary should take proper steps to provide for a like guaranty with reference to the part of the avenue belonging to the Government.

To effect these purposes the following amendments are recommended:

In line 5, strike out all after the word "thousand," to and including "thirty," and insert "and forty-four dollars and twenty-two."

Add section 2, as follows:

That when this settlement is made the Secretary of the Treasury shall take proper steps to secure for the United States the same benefit that the city of Indianapolis has obtained for other property holders interested in this improvement, to wit: That the said Christian M. Kirkpatrick shall keep in repair the portion of the said Clifford avenue belonging to the United States for five years from the completion of the work, for the payment of which provision is hereinbefore made, without additional cost to the Government.

Amend the title as follows:

Strike out all before the word "payment," in line 2, and insert "to provide for the."

Strike out "C.," in second line, and insert "Christian."

And when thus amended it is recommended that the bill do pass.

